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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,838	04/16/2001	Mark Vange	CIRC011	4185

25235 7590 08/22/2005  
HOGAN & HARTSON LLP  
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1200 SEVENTEENTH ST  
DENVER, CO 80202

EXAMINER
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JAROENCHONWANIT, BUNJOB

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/835,838

Applicant(s)

VANGE, MARK

Examiner

Bunjoo Jaroenchonwanit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/1/05 has been entered. The argument has been considered, the rejection cited are as stated below.

2. Examiner notes that applicant amended claims 1 and 12; claims 1-12 and 14-19 are remain pending for examination. Newly rejection are as stated below.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-8, 11-12, 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Bruck et al (US. 6,691,165).

5. Claims 1-8, 11-12, 14-16 and 18, Bruck discloses a system for load balancing in a network environment comprising:

a plurality of servers coupled by a plurality of communication channels to a network (back end servers connected to internet via a front end servers cluster 200, Fig.2; 1704, Fig. 17);

a set of network resources associated with each of the servers, wherein at least some of the network resources are redundant (abstract, server cluster 204, Fig. 2; 1706-1708, Fig. 17; Col. 5, lines 21-50; Col.28, lines 17-63);

a client coupled to the network and generating a request specifying some of the redundant resources (Clients 1710, Fig. 17)

a gateway machine coupled to the network in communication with the client, the gateway machine configured to receive the request from the client (front end server cluster 200 or 1704), select from amongst the servers that are associated with the request-specified redundant services, establish communication channels with the selected server over one of the communication channels, and access the specified server to service the received client request; and

means coupled to the gateway machine for selecting amongst servers of redundant resources a particular server for a received request so as to balance load amongst the servers providing redundant resources and to balance load across the plurality of communication channels (Abstract; Col. 2, lines 42-67; Col. 3, lines 22-44; Col. 5, line 21-Col. 7, line 40; Col. 12, line 3-Col. 13, line 5; Col. 28, line 17-Col. 29, line 58).

Bruck does not explicitly disclose system's structure that has a gateway separate from server. However, having a computer to function as a gateway integrated or separated from a computer, server or web server, would have been matter of design choice. Because, including in or separating functionality as taught by Bruck from, a computer could easily be done, regardless of computer location, integral or separation, without involving an inventive concept and without producing unexpected result, would have been obvious matter of choice, which court held unpatentable (See MPEP 2144.04 (V)).

6. Claims 9, 10, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Bruck et al, as applied to claim 1 above, in view of San Andres et al (US. 5,956,489).

7. Regarding claim 19, Bruck discloses the invention substantially, as claimed, as described in claim 1, including front end, i.e., intermediary server, are is separate address domain from back end server (Fig. 2, and 17). Bruck is silent to queuing request in the intermediary server.

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However, in an analogous art, San Andres discloses a gateway, i.e., intermediary server, which includes service map and a queue data structure for queuing service request, as claimed. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the request queue as suggested in San Andres for balancing service among server as suggested in San Andres (San Andres, Fig. 1, 4-5; Col. 5, lines 4055; Col. 6, lines 22-31; Col. 8, lines 4-12; Col.7, lines 48-56; Col. 8, lines 4-35; Col. 9, lines 32-52; Col. 10, line 40-Col. 13, line 48; Col. 18, lines 10-15; Col.21, lines 24-32).

8. Regarding claims 9, 10 and 17, Bruck discloses the invention substantially, as claimed, as described in claim 1, including means to select server for providing redundant services, but the selecting server does not explicitly include the factors, such as the relative quality and load threshold. However using relative quality for selecting server to provide service is conventional idea, which also taught in -San Andres. San Andres, in the same field of endeavor, teaches session map, MCP locator and redirector for monitoring and redirecting service request based on load of the server resided in gateway, (Fig. 1, 4-5, Col. 7, lines 32-56; Col. 10, line 53 - Col. 13, line 48), which clearly associated relative quality for server selection. In addition, San Andres teaches allocation server loads is based on threshold comparison, (Col. 7, lines 47-56). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to associate relative service quality for selecting server as suggested in San Andres for balancing service among servers as suggested in San Andres (San Andres, Fig. 1, 4-5; Col. 5, lines 4055; Col. 6, lines 22-31; Col. 8, lines 4-12; Col.7, lines 48-56; Col. 8, lines 4-35; Col. 9, lines 32-52; Col. 10, line 40-Col. 13, line 48; Col. 18, lines 10-15; Col.21, lines 24-32).

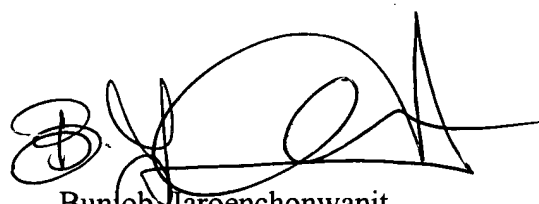
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9. Applicant's arguments filed 8/1/05 have been fully considered but they are moot in view of new ground of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bunjob Jaroenchonwanit whose telephone number is (571) 272-3913. The examiner can normally be reached on 8:00-17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bunjob Jaroenchonwanit  
Primary Examiner  
Art Unit 2143

/bj  
8/16/05